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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,275	01/23/2004	Michael A. Porter	CGL01/0207US8	6183

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EXAMINER	
WEIER, ANTHONY J	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 11/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/764,275	PORTER ET AL.	
	Examiner	Art Unit	
	Anthony Weier	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *25 August 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *2,4-10,13-15,17,21-26 and 28-41* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *2,4-10,13-15,17,21-26 and 28-41* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 2, 4-15, 17, 21-26, 28-34, and 37-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lawhon et al (U.S. Patent No. 5086166) taken together with Hodgins et al (U.S. Patent No. 4966379) and Kajs.

The claims stand rejected for the reasons set forth in the last Office Action (mailed 5/23/05) in addition to the following.

The instant claims now further call for said retentate to be dried. Although Lawhon et al discloses the preparation of a retentate curd, same is silent regarding further drying of same. However, it is known to spray-dry curd produced from oilseed material as taught, for example, by Kajs (col. 3, lines 59). It would have been obvious to one having ordinary skill in the art at the time of the invention to have further dried retentate product in Lawhon et al to provide a product having a longer shelf-life as set forth in Kajs (see Abstract).

The claims further call for drying said retentate to a certain degree. However, such determination would have been well within the purview of a skilled artisan, and, absent

a showing of unexpected results, it would have been further obvious to have dried the retentate material to the particular degree of moisture desired as a matter of preference as to the texture desired in the final product or the degree of shelf-life desired.

3. Claims 35 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied in paragraph 2 further in view of Jones.

The claims further call for grinding the spray-dried oilseed material to form free flowing solid particles. It is known to grind oilseed material into a free-flowing particle form as taught, for example, by Jones (col. 5, lines 13-15; col. 6, line 53). It would have been further obvious to have attained such free-flowing form through grinding as a matter of preference.

The claims further call for the particular degree of grinding. However, such determination would have been well within the purview of a skilled artisan, and it would have been further obvious to have attained such size as a matter of preference depending on, for example, the texture or density desired regarding the product.

4. Claims 40 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied in paragraph 2 further in view of Akasaka et al.

The claims further call for adjusting the pH of the retentate to a particular pH prior to drying. It is known neutralize soybean protein material prior to drying as taught, for example, by Akasaka et al (see Example 3). Akasaka et al teaches elsewhere that neutralizing a soy protein material prior to heat treatment is advantageous (col. 3, lines 30-33). It would have been obvious to one having ordinary skill in the art at the time of

the invention to have employed such neutralizing for such reason.

Response to Arguments

5. Applicants arguments filed 8/25/05 have been considered and the pertinent rejections have been withdrawn. Applicant's arguments are addressed in view of the rejection above.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-

1409. The examiner can normally be reached on Monday-Thursday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Anthony Weier
Primary Examiner
Art Unit 1761

Anthony Weier
November 9, 2005